

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for)	WC Docket No. 07-135
Local Exchange Carriers)	
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing a Unified Intercarrier)	CC Docket No. 01-92
Compensation Regime)	
)	
Federal-State Joint Board on Universal)	CC Docket No. 96-45
Service)	
)	
Lifeline and Link-up)	WC Docket No. 03-109

**REPLY COMMENTS OF
MID-RIVERS COMMUNICATIONS**

Mid-Rivers Communications (“Mid-Rivers”),¹ a diversified cooperative telecommunications provider, respectfully submits these Reply Comments on behalf of its member-subscribers who live and work in rural America. Mid-Rivers files these Reply Comments to highlight its concern that the promise of the Telecommunications Act of 1996 (the “1996 Act”) is being threatened in rural communities. The ABC Plan and the RLEC Plan (the “Plans”) presented in the Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceedings, DA 11-

¹ Mid-Rivers Communications is a trade name of Mid-Rivers Telephone Cooperative, Inc. Mid-Rivers is a member of the Rural Independent Competitive Alliance (“RICA”), an organization that has participated extensively in this and predecessor proceedings, most recently filing comments herein on August 24, 2011 (“RICA Comments”). Mid-Rivers wholly supports RICA’s Comments, as amplified by this filing.

1348 (rel. Aug. 3, 2011 (“Further Inquiry”) each contain elements that would effectively eliminate the provision of competitive landline and mobile services in rural areas, or relegate rural Americans to inferior service. This result is contrary to Congressional directives, and is antithetical to the public interest.

I. Overview

Mid-Rivers, and other service providers in Montana, as well as those serving rural areas throughout the nation, generally must contend with the challenges of large geographic areas and sparse population. To put into perspective the relative difficulties resulting from this geopolitical reality, the Montana Public Service Commission recently noted that the wireless area served by Mid-Rivers is roughly the size of the state of Indiana, but Indiana’s population density is roughly 100 times that of the Mid-Rivers wireless service area.² These real differences in service areas, and the difficulties in serving subscribers in rural areas, exist regardless of whether the service provider is an incumbent carrier or a competitive carrier. Accordingly, meaningful reform of intercarrier compensation and universal service mechanisms must reject any artificial distinction that unfairly favors incumbent carriers, and must address the significant impact that proposed reforms will have on competitive wireless and wireline rural service providers. Failure to consider these issues will jeopardize the continued viability of carriers that accepted the challenge of the 1996 Act to bring competitive services to rural America.

² See Reply Comments of the Montana Public Service Commission (Aug. 31, 2011) (“Montana PSC Reply”) at p. 6.

In addition to this critical substantive issue, the procedure adopted by the Commission in this Further Inquiry does not appear conducive to reasoned comment and decision-making. The complex plans under review by the Commission and the public lack detail on several crucial points. Moreover, meaningful review and analysis of even the broad outlines of the Plans is also limited by the short timeframes adopted in this proceeding. In the context of reasoned business planning, Mid-Rivers is concerned that the proposals under consideration have the potential to undermine its ability to continue the provision of service in high-cost areas, but, like numerous other commenters, Mid-Rivers finds that the lack of clarity in the proposals defies a reasonable assessment of their ultimate impact.³

As an ILEC, and also as a competitive carrier that receives CETC support, Mid-Rivers is concerned with the proposals that phase out support for CETCs. Our CETC operations serve the rural high cost areas that the price cap and large wireless carriers neglected to serve. In reliance on the Commission's rules implementing the 1996 Act, Mid-Rivers invested in high-cost areas to bring those services that were already available in urban areas to the residents and businesses of rural America. The continuation of this support is necessary to the on-going sustainability of services at rates reasonably comparable to those in urban areas, and is also necessary to the continued build-out of networks in rural areas where the availability of broadband services is critical to sustaining rural economies and jobs.

³ See, e.g., Comments of the Iowa Utilities Board (Aug. 24, 2011) at p. 2, Comments of the National Association of Regulatory Utilities Commissioners (Aug. 24, 2011) at p.3, Further Comments of the Pennsylvania Public Utility Commission and Accompanying Legal Memoranda (Aug. 24, 2011) ("PaPUC Comments") at p. 4.

These considerations are relevant to rural incumbent and competitive carriers alike, and critical to the development and maintenance of specific, predictable and sufficient support mechanisms to preserve and advance universal service.⁴ Rather than phasing out universal service support for those CETCs that have made the commitment to serve rural areas, the FCC should be considering methods of directing and distributing universal service support in an effective and efficient manner. Mid-Rivers reiterates its position that CETCs who serve those areas too long ignored by the larger carriers should be eligible for cost-based support to ensure the opportunity to recover the investments that were made in unserved and underserved areas. The failure of the subject Plans to recognize the similarity of challenges facing both incumbent and non-incumbent rural service providers threatens to undermine the promise of the 1996 Act, and exacts a penalty on those carriers who are attempting to deliver that promise to rural subscribers.

II. Critical Concerns for Continued Competition in Rural Areas

While the Further Notice and responsive comments address a wide variety of issues and policy positions, Mid-Rivers will concentrate these Reply Comments on four discrete elements of the Plans that illustrate a disturbing disregard for the demonstrated commitment to and success of rural competitive carriers in bringing advanced services, including broadband, to areas that were largely abandoned by the very incumbent price-cap carriers now seeking favored treatment. To preserve existing competition and encourage additional services in rural America, issues of support definition, eligibility and sufficiency must be resolved. First, as raised in the context of Plan components, the legitimacy of a “right of first refusal” for broadband support is questionable. Second,

⁴ 47 U.S.C. § 254(b)(5).

equality of treatment for competitive wireline providers regarding access reform is critical. Third, the absence of comparability of satellite-delivered broadband services to terrestrial delivery mechanisms must be examined. Finally, the Commission must address the sufficiency of mobile broadband support.

A. A “right of first refusal” is inappropriate.

Mid-Rivers agrees with those commenters who submit that the continued involvement of state public utility commissions in ETC designation is both appropriate and consistent with the 1996 Act.⁵ State commissions generally are more familiar with both the carrier and the customer, and, judging from the record in this proceeding, appear ready and willing to continue their statutorily-defined oversight role. In contrast, the proposal to afford a “Right of First Refusal” to the price-cap incumbents for broadband support usurps that state function, and should be rejected on that ground alone.

In addition, however, the right-of-first-refusal proposal would not serve the public interest. As RICA notes, it “would be neither competitively neutral nor in the best interests of subscribers to tilt the scales in favor of the very price cap ILECs that the record shows have a historical lack of interest in bringing broadband to rural America.”⁶ The Pennsylvania Public Utilities Commission draws an even darker picture, suggesting that the proposal’s lack of structure will lead to gaming that “will worsen, not cure, the ‘digital divide’ . . . in clear violation of both the letter and the spirit of Section 254(b)(3)” of the 1996 Act.⁷

⁵ 47 U.S.C. § 214(e)(2). *See also, e.g.*, Montana PSC Reply at p. 8.

⁶ RICA Comments at p. 12.

⁷ PaPUC Comments at p. 11.

It would appear from the record in this proceeding that state commissions uniformly are prepared to continue in their decision-making roles. Mid-Rivers would expect that state commissions will ensure that support will be directed to those carriers that have demonstrated their commitment to invest in and serve rural areas.

B. Rural CLEC participation in access reform is required.

In April, 2001, the FCC determined that the record supported the creation of a “rural exemption” for CLEC access rates, finding that CLECs encountered the same difficulties in providing service to rural areas as that experienced by incumbent carriers.⁸ That finding is still accurate, but the current reform proposals fail to acknowledge this fact. The combined effect of failing to include qualifying rural CLEC access charges in reform mechanisms, together with the proposed elimination of USF support for CETCs, would have a devastating impact on our CLEC operations, and those of similarly-situated carriers. CLECs must also be able to recover the contemplated reduction in access charges through reform mechanisms, as previously recognized under the “rural exemption.” The continued availability of competitive service in rural areas is at issue.

C. Rural citizens are entitled to comparable services.

The 1996 Act establishes the principle that consumers in rural areas should have access to advanced services at rates that are reasonably comparable to those available in urban areas. The 1996 Act also establishes the principle that the specific and predictable support mechanisms established by the FCC should be designed to preserve and advance universal service. This legal framework means that any USF reform must ensure the

⁸ See RICA Comments at p. 21.

provisioning of comparable and affordable broadband to unserved and underserved customers of our nation.

Proposals to substitute satellite for terrestrial or wireless broadband services are not accompanied by proof that satellite services are comparable to terrestrial or wireless services in either quality or price. As the New Hampshire Public Utilities Commission notes, there is no quantitative data on market acceptance of satellite as a substitutable service, and anecdotal data indicates that satellite service is not comparable in service or price.⁹

It is both unfair and contrary to clear Congressional directives for rural Americans to be relegated to satellite broadband services that are not comparable to other broadband services provided in more urban areas. The 1996 Act makes clear that a double standard should not be tolerated: rural Americans should not be left with second-class satellite broadband services. Accordingly, the ABC Plan suggestion that universal service funding be available for satellite services should be rejected.

D. Mobile broadband support must be sufficient.

The FCC should formally recognize that fixed broadband and mobile broadband services are complimentary; each should be eligible for universal service support to ensure that rural subscribers are afforded comparable services at reasonable rates. Unfortunately, it appears that the mobility fund as proposed is neither predictable nor sufficient to accomplish the goals of providing mobile broadband universally. The mobility fund as proposed appears to be funded only if there are funds left over from

⁹ Comments of the New Hampshire Public Utilities Commission (Aug. 24, 2011) at pp. 6-7. *See also* Comments of the Nebraska Rural Independent Companies in Response to August 3, 2011 Further Inquiry (Aug. 24, 2011) at pp. 47-54 (satellite service is inferior due to factors such as weather sensitivity and terrain limitations).

wireline support. This lack of sufficiency and predictability makes it difficult for rural wireless carriers to make long-term investment decisions to provide service to the unserved and underserved areas.¹⁰

Furthermore, it is unclear how the mobility funding will be distributed, but Mid-Rivers submits that mobility funding should be based on actual costs. While models may prove a useful surrogate, rural carriers must be afforded the option to demonstrate that actual costs may exceed the cost model predictions. To ensure certainty and predictability, a specific and standardized process, rather than a waiver procedure, should be adopted for cost demonstration and subsequent reimbursement.

III. Conclusion

The long-term investment decisions of Mid-Rivers Communications with respect to its ILEC, CLEC and Wireless CETC operations were based in large part on the principles of the 1996 Act and its implementing regulations. Phasing out all CLEC and Wireless CETC support undermines the network build-out progress that has been accomplished in rural areas during the past 15 years. USF and ICC reforms must acknowledge the benefits that existing investments in high cost areas have afforded, and offer future broadband build-out support to all carriers willing to make the service commitment, whether a rural ILEC, a rural CLEC or a rural wireless CETC. This requires (1) abandonment of a proposal to institute a “right of first refusal” regarding universal service funding eligibility or eligible telecommunications carrier designation; (2) promotion of meaningful competition in rural areas by ensuring equal treatment for

¹⁰ To the extent that satellite providers will have access to the mobility fund, the sufficiency of mobile funding is even more uncertain.

ILECs and CLECs with regard to access reform; (3) rejection of second-class status for rural citizens through relegation to inferior satellite broadband services; and (4) support of universal availability of wireless services through ensuring the sufficiency of a mobility funding.

Respectfully submitted,

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September 6, 2011